IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 3551 OF 2004

Kulsumbi A. Kadir Vasta .. Petitioner

versus

Government of Maharashtra .. Respondent

...

Mr.S.M. Kazi for the petitioner.

CORAM : D.G. KARNIK, J

DATED : 31st August 2004

P.C:-

1. Heard the learned counsel for the petitioner.

2. A suit filed by the petitioner bearing regular Civil Suit no.115 of 1987 was dismissed by the Court by an order dated 24th November 1994 for non appearance of the petitioner. An appeal filed against the order of dismissal was dismissed by the District Court by an order dated 4th November 2003. That order is impugned in this Writ Petition.

3. From the perusal of the order dated 24th November 1994, it is not clear whether the order was passed under Order 9 Rule 3 or Order 9 Rule 8 of the Code of Civil Procedure. However, in either case, the remedy of the petitioner was to apply for setting aside of a dismissal under Order 9 Rule 4 or Order 9 Rule 13 of the Code of Civil Procedure and not to file an appeal. The appeal itself was not maintainable and has been properly dismissed.

4. There is no merit in the petition which is hereby rejected.

D.G.KARNIK,J